

M/s. Venkateswara Vegetable Fruits Chillies growers" cold storage Private Limited and Others Vs District Collector and Others

Court: Andhra Pradesh High Court

Date of Decision: Jan. 3, 2014

Acts Referred: Constitution of India, 1950 - Article 19(1)(g) 226

Citation: (2014) 2 ALD 289 : (2014) 2 ALT 166

Hon'ble Judges: A. Ramalingeswara Rao, J

Bench: Single Bench

Advocate: G.L.V. Ramana Murthy, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A. Ramalingeswara Rao, J.

1. The facts and the issue raised in all these cases are common and hence they are being disposed of by this common judgment. The petitioners are

doing business in cold storage for storing chillies in Guntur District. The petitioners provide the required atmosphere of cooling to the deposited

stock so that the chillies do not get damaged. The farmers as well as the traders deposit their red chilli crop in the petitioners" cold storage for a

period not less than one year and take back their stock as and when they get a reasonable price for their goods. At the time of deposit of the chilli

stock, the farmers take bonds showing the quantity of chilli bags deposited by them with the petitioners. They hypothecate the said bonds and

obtain loans from nationalized, non-nationalized banks and other financial institutions. Thus, it is the duty of the petitioners to take care of the goods

deposited with them and to maintain the temperature for cooling the stocks deposited in the cold storage. They formed into an association by name

"Guntur District Cold Storage Owners" Welfare Association". Every year before commencement of the crop year, the Executive Body of the

Association passes resolution and fixes the cooling charges for every chilli bag of 45 kilograms weight to be charged from the depositors. The

petitioners have necessary licenses from the concerned departments for running their business. During the relevant year 2008 the Association

passed a resolution for collecting charges at the rate of Rs. 90/- per bag for the entire year. On 14.02.2009, the Association passed a resolution

for not collecting more than Rs. 100/- for the year 2009. Since the rate fixed was a maximum rate, some of the petitioners were collecting less than

the fixed rate also. Similarly some of the depositors were depositing bags weighing between 45 to 70 kilograms but the charged rate was uniform.

While so, in the year 2008 the 1st respondent convened a meeting with the cold storage owners in his office and enquired with regard to the

procedure that was adopted for charging the rates. Thereafter, on 07.11.2009 the 1st respondent convened a meeting of the owners of the cold

storage. The season for the year 2009 ends by December 2009 and hence he enquired with regard to the charges collected for that season also

but no minutes were recorded and no agreement was entered between the 1st respondent and members of the association. But the 1st respondent

issued a show cause notice in RC. No. 199/09/GR-II dated 07.12.2009 to all the cold storage owners stating that they have been collecting Rs.

100/- per bag where as the charges fixed by the District Administration for the season up to 2009 was Rs. 90/- only and the excess collection of

Rs. 10/- per bag was unwarranted and it resulted in collection of amount of Rs. 6,00,000/- due to stock of 60,000 bags as on 01.05.2009 and if

the amount was not paid he would see that the license issued by the concerned departments would be cancelled. A reply was sent by the

petitioners and without considering the said reply nor giving any opportunity to the petitioners, the Joint Collector passed a final order on

08.05.2010 directing the petitioners to pay an amount of Rs. 6,00,000/- each within 7 days failing which the amount would be recovered under the

provisions of Revenue Recovery Act and the said notice was served on the petitioners on 11.05.2010.

2. The 2nd respondent filed a counter on behalf of the respondents stating that a huge fire accident took place in Market Yard, Guntur on

03.05.2008 causing great financial loss to hundreds of farmers. The stock kept by the farmers in the market yard was completely damaged. Then

the farmers were constrained to keep their stocks in cold storage units owned by private parties. Taking advantage of the situation, the petitioners

started collecting exorbitant rates from the poor farmers. Under the said circumstances, the Joint Collector, Guntur convened a meeting with the

representatives of the Cold Storage Owners Association and also some of the owners of the said units on 13.05.2008. During the course of

meeting, the President of the Cold Storage Owners Association stated that only Rs. 90/- per bag was collected for 10 months period and no

excess amount was collected. They agreed to exhibit through flexi boards in front of every cold storage stating that storage charges were Rs. 90/-

per bag and complaints could be lodged if any cold storage demands excess charges over the above rate. The representatives accepted the said

proposals and signed the minutes of the meeting. On 07.11.2009, another meeting was convened by the 1st respondent pursuant to the complaints

received during the Adarsha Rythu Sadassu stating that the cold storage units were collecting charges more than Rs. 90/- per bag. They were

asked to explain the reasons for collection of charges for 10 months even though the farmers withdrew their produce in a short period. The 1st

respondent was not convinced with the explanation of the representatives and concluded that excess collection of storage charges have to be

recovered from the cold storages. The 1st respondent constituted a committee to discuss with the cold storage units with regard to collection of

charges and complaints. Accordingly, on 09.11.2009 a meeting was conducted wherein the 1st respondent was given the authority to fix the rates

for 2010 and 2011 seasons. Pursuant to the decision taken in the meeting held on 07.11.2009 and note orders dated 21.11.2009, the Joint

Collector, Guntur issued show cause notices to all the concerned cold storage units and the petitioners submitted their explanation. After

considering the explanation, the Joint Collector issued a final notice dated 08.05.2010 calling upon the petitioners to pay the excess amount of Rs.

6,00,000/- collected from the farmers within 7 days from the date of receipt of the notice and informed that the said amount would be recovered

under the provisions of the Revenue Recovery Act, if the same was not paid. It is denied that there were no resolutions or agreements or minutes

recorded in the meeting and stated that the petitioners agreed to recover the excess amount collected, if any, by the members of the association.

Since the farmers are subjected to exploitation by the petitioners, the action was taken and it is in accordance with law only.

3. Heard the learned Counsel for the petitioners and learned Government Pleader for the respondents.

4. During the hearing, the learned Government Pleader passed a copy of the resolution passed in the meeting held with the cold storage owners in

the meeting convened by the 1st respondent at DRC meeting hall on 24.12.2009. A perusal of the minutes show that the Joint Collector, Guntur

requested to adopt the rate of Rs. 90/- fixed earlier and the owners expressed their willingness for storage charges at Rs. 95/- per bag including all

charges. They stated that most of the members had collected at old rates fixed by the district Administration and 2 or 3 cold storages only were

collecting higher rates due to non-availability of storage space. Due to increase of Hamali charges, Rs. 95/- per bag was acceptable for the cold

storages constructed during 10 to 15 years back and hence requested to fix Rs. 95/- per bag during the season. It was decided to collect Rs. 95/-

per bag for the price of storing, hamali, insurance during the next 2 years season 2010, 2011 and the cold storages had to display notice board

mentioning vacancy position etc.

A memorandum of understanding was also recorded to the same effect between the Collector and District Magistrate, Guntur; the Chairman,

Agriculture Market Committee, Guntur; Deputy Director and Assistant Director of Marketing, Guntur on one hand and President, Cold Storage

Association Guntur; Secretary, Cold Storage Association, Guntur and association members. While admitting the writ petition on 26.05.2010 this

Court granted interim stay of the proceedings dated 08.05.2010 subject to the petitioners depositing 1/3rd of the demanded amount with the 1st

respondent within 4 weeks and it is represented that the parties have complied with the said order.

5. The only point that arises for consideration in these cases is whether the respondents are empowered to issue the orders of the nature issued by

the Joint Collector in Rc. No. 199/09/GR-II dated 08.05.2010. The impugned order reads as follows:

OFFICE OF THE COLLECTOR AND DISTRICT MAGISTRATE, GUNTUR.

Rc. No. 199/09/Gr-II

Dated: 08.05.2010

FINAL NOTICE

Sub:- Agricultural Market Committee, Guntur - Cold Storages Fixation of storage charges payable by farmers - Collection of excess storage

charges by Cold Storage Units - Recovery of excess amount of Rs. 6,00,000/- Final Notice - Issued.

Ref:- 1. Notice issued vide Rc. No. 199/09/Gr-II, Dt. .12.2009 of Joint Collector and Addl. District Magistrate, Guntur.

2. Explanation submitted by S.V. Cold Storage, Dt: 14.12.2009.

3. Note orders of Collector and District Magistrate, Guntur, Dt: 22.03.2010.

You have been issued a Notice in the reference 1st cited to explain why the excess amount Rs. 6,00,000/- collected from farmers as storage

charges shall not be recovered from you as you have violated the Orders of District Administration.

The explanation submitted by you vide reference 2nd cited is not convincing and it clearly shows that you have deliberately violated the orders of

the District Administration by collecting excess storage charges against fixed rate.

Hence you are hereby directed to pay the excess amount collected from farmers Rs. 6,00,000/- as storage charges to this office within 7 days

from the date of receipt of this Notice failing which the amount will be recovered under the provisions of RR Act.

Sd/- A. Sharath,

Joint Collector and Addl. District Magistrate, Guntur

6. It is contended by the learned Counsel for the petitioners that the 1st respondent has no authority under law to direct the petitioners to deposit

the amount alleged to have been collected in excess of amount fixed by the "District Administration" and since the orders emanated from the 1st

respondent the petitioners are under constant threat to obey his orders. It is his further contention that the relationship between the petitioners and

the farmers are contractual and dictated by the market conditions and there is no law which governs the relationship enabling the 1st respondent to

enforce the same. The learned Counsel for the petitioners submitted a note on "District Administration" in support of his contention with regard to

the role of the District Collector in administration of district.

On the other hand the learned Government Pleader for the respondents submits that the High Court should keep larger public interest in mind while

exercising the powers and it should adopt ways to sustain the orders passed by the authorities in public interest instead of quashing the

proceedings. The Writ Jurisdiction of High Court, being discretionary, Writs cannot be issued as of right or as a matter of course and it should be

issued only if substantial injustice is ensued or is likely to ensue and the court should interfere only when it comes to conclusion that overwhelming

public interest requires interference in the matter.

7. In the back drop of these rival contentions the powers of "bureaucracy" in a democratic setup in general and that of the "District Administration"

in particular have to be delineated and explored for the purpose of proper decision in this case.

8. Since the impugned order was passed on the ground of violating the orders of the "District Administration" it is necessary for this Court to

examine the scope of "District Administration".

9. The record in this case reveals that the Collector and District Magistrate held meetings with the stakeholders and officials on various dates and

tried to fix the rate per bag, but that has only a persuasive value without any legal sanction. "District" is the basic unit of State administration and the

District Collector no doubt heads it. He has regulatory, developmental, crisis management, electoral duties and other residuary functions, but all

these functions have to be performed as sanctioned by law only. The office of the District Collector has a history of more than 200 years. The post

of District Collector was created in 1772 by Warren Hastings. It was abolished in 1773 but was restored in 1781. They were vested with

magisterial powers since 1787. Before the first War of Independence in 1857, the Collector was a fiscal representative of the Government for

receiving various types of revenue. As a Magistrate, he was responsible for the maintenance of law and order. The Act of 1919 brought a change

in the role of Collector by creation of legislative Council and vesting power in the elected Ministers. Their role again underwent change by Act

1935. After the Constitution of India came into force, due to separation of powers of Judiciary from the executive, the judicial powers of the

Collectors were divested and vested with judicial officers leaving the Collectors with limited powers as District Magistrates and Collectors. The

District Collector is not part of the political executive, and the political executive is separate from bureaucracy. The Collector has to implement the

decisions of the political executive and he cannot implement independent policies without the sanction of the political executive and legislature. No

doubt he acts as crisis manager and has to settle grievances of the public. If the grievance is within his/her jurisdiction, he can settle them

independently, but when other remedies are available he should advise the aggrieved persons to invoke those remedies instead of settling them on

his own. Lord Atkin said long back in AIR 1931 248 (Privy Council)) that the executive can only act in pursuance of the powers given to it by law

and it cannot interfere with the liberty, property and right of the subject except on the condition that it can support the legality of its action before

the Court. The Supreme Court dealing with executive functions held in Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, that it

may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the

residue of governmental functions that remain after legislative and judicial functions are taken away.

10. In this connection, we can usefully quote from the decision of the Supreme Court in Tata Cellular Vs. Union of India, wherein it was quoted in

para 102 referring to Administrative Law-Rethinking Judicial Control of Bureaucracy by Christopher F. Edley, JR (1990 Edn.) At page 96

wherein it was stated thus:

A great deal of Administrative law boils down to the scope of review problem; defining what degree of deference a Court will accord an agency's

findings, conclusions, and choices, including choice of procedures. It is misleading to speak of a "doctrine" or "the law", of scope of review. It is

instead just a big problem, that is addressed piecemeal by a large collection of doctrines.

In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Supreme Court observed....

At the same time, "bureaucracy" came under a cloud. In Great Britain the late Lord Hewart had written of "the new despotism", and Dr. C.K.

Allen of "bureaucracy triumphant." In France the Confederation General du Travail (CGT) had stated in its Programme in 1920 that "We do not

wish to increase the function of the State itself nor strengthen a system which would subject the basic industry to a civil service regime, with all its

lack of responsibility and its basic defects, a process which would subject the forces of production to a fiscal monopoly.....". This distrust of

government by civil service, justified or not, was a powerful factor in the development of a policy of public administration through separate

corporation which would operate largely according to business principles and be separately accountable.....

11. In this case, the District Collector has done what he was not supposed to do as fixation of price for the goods stored in a cold storage is not

within his purview. It is regulated by market conditions between the cold storage owners and the farmers and is a legislative function. The

establishment of cold storages is of recent origin. There is no obligation on the part of the farmer to store his produce in the cold storages. If it is

advantageous to the farmer he uses that facility and if it is prohibitive he would seek alternative sources. Till price fixation mechanism is put in place

by relevant laws or made by the competent legislature, the administrator has no role to play on his own even for public good.

12. It is contended by the learned Government Pleader that Writ is not issued as of right or as a matter of course and it is discretionary and such

discretionary power of this Court need not be exercised in all cases where there is no error of law. He relied on a division bench of this Court

reported in *The Associate Cement Company Ltd. Vs. The Commercial Tax Officer and The Deputy Commissioner of Commercial Taxes*, . In that

case, this Court was considering the refund of amount forfeited by assessing authority towards excess collection of sales tax with interest thereon.

This court opined that refund would enable it to unjustly enrich itself at the cost of State and retain the tax collected from the purchasers. In the

instant case, there is no question of unjust enrichment and rates were collected during the course of their business. The learned Government

Pleader also relied on a judgment of the Hon^{ble} Supreme Court reported in *Ramniklal N. Bhutta and another Vs. State of Maharashtra* and

others, and contends that the Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 of

the Constitution of India. The said case was delivered under Land Acquisition Act and those observations were made in the context of moulding

relief in land acquisition proceedings. This Court is conscious of the nature of jurisdiction exercisable under Article 226 of the Constitution of India.

This Court in exercise of its powers under Article 226 sees that an authority exercises his functions/powers within the four corners of law and does

not transgress the same even for public good. Whether a particular act is for the public good or not is a matter left to the legislature and to some

extent to the constitutional courts by the Constitution. The administrator cannot don the role of a Good Samaritan and his actions are subject to

judicial review by the Constitutional Courts. He can only govern but cannot reign. In this batch of cases, the petitioners approached this Court

challenging the action of the District Collector and this Court has a duty to see whether the District Collector has acted within his authority in fixing

the price for storage of chilli bags by the farmers and also in demanding the excess amount alleged to have been collected by the petitioners for

refund to the farmers. This court has a duty to protect the business rights of the petitioners also under Art. 19(1)(g) of Constitution of India and

cannot order refund of the alleged excess amount collected from the farmers even if the farmers approach this court without showing any violation

of law. The farmers are consumers vis-a-vis the cold storage owners and the farmers have other remedies open for settlement of their grievances.

The District Collector cannot stay as mediator where he is not supposed to sit. The impugned order passed by the Joint Collector/1st respondent

is clearly without jurisdiction and not sanctioned by any provisions of law.

13. Consequently, all the writ petitions are allowed and the respondents are directed to refund the amount to the petitioners, deposited by them in

pursuance of the interim orders passed by this Court. No order as to costs. As a sequel, Miscellaneous Petitions, if any, pending in this petition

shall stand closed.